

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

**IN THE MATTER OF THE APPLICATION
OF ROPER CONSTRUCTION INC.
FOR AN AIR QUALITY PERMIT
NO. 9295, ALITO CONCRETE BATCH PLANT**

AQB 21-57(P)

**ROPER CONSTRUCTION, INC.'S
RESPONSE TO MOTION TO DISMISS NSR PERMIT APPLICATION**

Roper Construction, Inc. ("Roper") submits the following response in opposition to The Ranches of Sonterra Property Owners Association's ("Sonterra") Motion to Dismiss NSR Source Permit Application and Case No. AQB 21-57(P) Based on Insufficient Notice, Improper Posting of Public Notice, and Incompleteness ("the Motion"), served on November 12, 2021.

The Motion requests that the permit application be dismissed because: (1) notice was not provided by mail to all property owners of record within one-half mile of the proposed facility location; as required by 20.2.72.203.D(1)(b)¹ NMAC; (2) the notice was not posted at a conspicuous location at the entrance to the facility, as required by 20.2.72.203.D(4)² NMAC; and (3) the air permit application was not complete. As explained below, Sonterra's motion must be denied. Notice was made upon all property owners of record as listed on the latest property tax schedule, as required by 20.2.72.203.B(1)(b) NMAC; the notice was posted at a conspicuous location at the entrance to the property, as required by 20.2.72.203.B(4)(a) NMAC; the application has been filled out completely; and the Ranches of Sonterra lack standing to bring a challenge to notice on behalf of a resident of Legacy Estates.

¹ The correct citation is 20.2.72.203.B(1)(b).

² The correct citation is 20.2.72.203.B(4)(a).

I. Background

On June 14, 2021, Roper submitted its application (“Application”) to construct a new concrete batch plant to the New Mexico Environment Department’s (“NMED”) Air Quality Bureau (“Bureau”). The relevant portion of the original Application is attached as Exhibit 1. The Bureau deemed the Application administratively complete on July 22, 2021. *See* Exhibit 2, Administrative Completeness Determination. During the Bureau’s review, the Bureau requested corrections to the Application. In accordance with 20.2.72.203.E NMAC, Roper submitted the requested information and corrections. On September 17, 2021, NMED issued a draft permit approving the application with conditions and a Statement of Basis for the draft permit. NMED filed the Public Hearing Determination for this matter on November 2, 2021. A Notice of Hearing and Appointment of Hearing Officer was filed on November 17, 2021.

II. Public Notice

a. Notice to Owners of Record

In paragraphs 4 and 5 of the Motion, Sonterra claims “at least two (2) property owners located within one-half mile of the proposed location have not received notice of the Application.” The motion claims that “under 20.2.72.203.D(1)(b) NMAC [sic], the public notice for the permit must be provided by certified mail to property owners of record within one-half mile of the proposed facility location.” Motion, ¶ 5.

First, 20.2.72.203.B(1)(b) NMAC requires notice of the permit application be “provided by certified mail, to the owners of record, as shown in the most recent property tax schedule” within one-half mile of the property. To meet this requirement, Roper requested a list of all current property owners of record from the Lincoln County Assessor. Lincoln County provided a list of property owners of record and a map showing a one-half mile radius. *See* Exhibit 3, Affidavit of

P. Wade. Notice was then sent out to the property owners on the list. The list of property owners and proof of certified mail is in Section 9 of the Application. In an affidavit and screenshot attached to Sonterra's motion, Kathleen and Donnie Weems who reside at 116 Legacy Lane, Alto, New Mexico are identified. In her affidavit, Ms. Weems asserts that she never received notice of the air permit application from Roper. Motion Exhibit 1, ¶ 6.

Roper mailed notice by certified mail to all property owners on the Lincoln County Assessor's list of property owners of record. Ms. Weems was not listed in the information provided by the Assessor; however, her parcel number was listed. Application, Section 9. Using the Lincoln County Assessor's Online Mapping tool found at: <https://portico.mygisonline.com/html5/?viewer=lincolnnm>, Ms. Weems' parcel is identified with a parcel number 4072059339149000000. Clicking on that parcel number, reveals that a Mr. Bart Lestourgeon was the listed owner of record for that parcel. Mr. Lestourgeon was listed as having been sent notice of the application by Roper on Page 4 of Section 9 of the Application. Utilizing the tracking number 70201290000187912012 as found on the certified mail ticket for Mr. Lestourgeon, Roper's notice was delivered on June 11, 2021. *See* Exhibit 4, Delivery Confirmation; *see also* Application, Section 9, Certified Mail Scans.

Contrary to the assertion by Sonterra, Roper has followed all required procedures regarding notice set out in 20.2.72.203.B NMAC. Roper reasonably relied on the list provided by the Lincoln County Assessor. The Weems' property was not excluded from the notice because notice was sent to the record owner of that parcel, according to the Lincoln County Assessor.

Second, Sonterra relies on an unreported New Mexico Court of Appeals Memorandum Opinion, *Northeastern New Mexico Regional Landfill, LLC v. The New Mexico Environment Department and Martinez, et.al.*, Ct. App. No. 28,236 consolidated with 28, 229 to support their

position that the Application must be dismissed based on the lack of notice. NMRA 12-405 dictates that such memorandum opinions are not precedent. Additionally, *Northeastern*, is factually different from the issue at hand. In *Northeastern*, notice was challenged on the grounds that the notice itself was inadequate. *Northeastern*, 17:13-18:3. Here, Sonterra has not challenged the contents of Roper's notice, rather Sonterra asserts that Roper has not provided notice at all. As discussed above, Roper did provide notice to the parcel in question to the owner listed by the Lincoln County Assessor.

Sonterra also relies on *Northeastern* for the premise that a failure to comply with regulatory notice requirements is a serious deficiency that precludes the rights of interested parties to participate in the hearing process. Motion, ¶ 7. We disagree that the alleged lack of notice precluded Ms. Weems from participating in the hearing process. Ms. Weems has been active in making her views on the Roper facility known by (1) submitting three separate comments to the Bureau regarding the Application on June 28, 2021, July 9, 2021, and July 19, 2021, (2) submitting an affidavit to Sonterra's Motion, and (3) becoming a party to a related a related civil action against the Roper facility (No. D-1226-CV-2021-00241).

b. Conspicuous Notice at the Proposed Entrance to the Property

Sonterra also asserts that the notice on the property was not posted at the proposed entrance to the facility and was not conspicuous, as required by 20.2.72.203.B(4) NMAC. Motion, ¶ 6. 20.2.72.203.B(4)(a) NMAC requires a public notice to be posted accessibly and conspicuously at the proposed or existing facility entrance on the property. Section 9 of the Application includes two photos that demonstrate where notice was posted on the Roper property. The Memorandum of Law ("Memorandum") submitted with the Motion asserts that the notice is not posted at the "entrance" of the proposed facility. Memorandum, 5. The property is currently a vacant lot;

therefore, there is no existing entrance. The notice was posted at the proposed entrance to the facility. The notice was laminated and securely nailed to a wooden board. Application, Section 9. The notice is both conspicuously placed on the property and accessible should someone want to read it.

Sonterra cites *Baca v. Grisolano*, 1953-NMSC-028, ¶ 18, 57 N.M. 176, for an interpretation of the word “conspicuous”. Sonterra particularly highlights that the fact witnesses in *Baca* could not read the notice from the highway, which led the court to hold that the notice did not comply with the statute that allowed for issuance of a liquor permit. *Id.*, ¶¶ 12, 20. Sonterra takes this out of context and fails to also include that for anyone to read the notice at issue in *Baca*, they also had to crawl through or climb over five-wire fence where three of those wires were barbed. *Id.*, ¶¶ 9, 12. That is not the case here. 20.2.72.203.B(4) NMAC requires the notice to be “accessible” and “conspicuous”. Roper’s notice is accessible. It is not behind any barbed wire fencing, nor is it deliberately difficult to get to as Sonterra insinuates. Anyone driving past the site can pull over and read the notice. Additionally, Roper’s notice is conspicuous. It is clear from the photographs in both the Application and Exhibit C of the Motion, that the notice is placed out in the open for all to see and is not placed deceptively such as behind any foliage.

The applicable regulation does not specify the size of the notice to be posted on the property. 20.2.72.203.B(4) NMAC. It merely states it must be “accessible” and in a “conspicuous place”. *Id.* As discussed above, the notice is accessible. Black’s Law Dictionary defines a “conspicuous place” for the purposes of posting notices as “a location that is reasonably likely to be seen”. *Conspicuous Place*, Black’s Law Dictionary (11th ed. 2019). This definition does not specify that it must be readable from a distance. The notice is clearly likely to be seen by a person driving by. Should that person want to read the sign, the notice is accessible for them to pull over

and read it. Additionally, when it is important for a notice to be readable from the road, agencies have specified that in their regulations. *See* 20.6.2.3108.B(1) NMAC Ground and Surface Water Protection (requiring a notice to be at least 2 feet by 3 feet in size); 20.9.20.19.A NMAC Public Notices Relating to Scrap Tire Management (requiring a notice to be at least 1 1/2 feet by 2 1/2 feet in size). For example, the Albuquerque Bernalillo County Air Quality Control Board (“ABCAQCB”) specifies significantly more criteria for notice posted on the site for an air construction permit. 20.11.41.13.B(2) NMAC. The ABCAQCB criteria includes a “weather-proof sign provided by the department, posted at the more visible of either the proposed or existing facility entrance, or if approved in advance and in writing by the department, at another location on the property that is accessible to the public”. *Id.* Again, no such criteria exist in 20.2.72.203.B(4) NMAC, which governs the required notice for Roper’s Application. Therefore, Roper’s notice posted on his property is proper and the motion must be denied.

c. Validity of Administrative Proceedings

Sonterra relies on *Martinez v. Maggiore*, 2003-NMCA-043, 133 N.M. 472 to claim that administrative proceedings will be invalidated if they proceed without the notice “defect” cured. 2003-NMCA-043, 133 N.M. 472; Memorandum, 3-4. The notice provision at issue in *Martinez* was the statutory notice requirement of the New Mexico Solid Waste Act, 1978, § 74-9-22. *Martinez*, 2003-NMCA-043, ¶ 9. The Court determined that “the administrative proceedings conducted subsequent to the Landfill's defective notice are invalid.” *Id.*, ¶ 13. As a result, the court remanded the application back to the Secretary of the Environment Department for review after publication that complied with Solid Waste Act was completed. In this case, the notice is not required by statute. Rather, it is a regulatory requirement, thus making *Martinez* inapplicable. The Air Quality Control Act (NMSA 1978, §§ 74-2-1 through -17) does not prescribe notice in the

same way that the New Mexico Solid Waste Act does. Rather in Section 74-2-7, the Legislature has left it to the Environmental Improvement Board to determine “the specification of the public notice” by regulation. NMSA 1978, § 74-2-7(B)(5) (2021). The Environmental Improvement Board interpreted this in the context of construction permits and promulgated 20.2.72 NMAC.

III. Administrative Completeness

Sonterra asserts that the Application must be dismissed based on information missing from the Application. Specifically, Sonterra claims Application Section 1-D question 7 excludes the Mescalero Apache Indian Tribe from the answer and question 11 omits a distance to the nearest residence, school, or occupied structure. Motion at ¶¶ 4-5. Sonterra is wrong. Sonterra’s assertions are based on the Application, as originally filed. As the affidavit from Mr. Wade, Roper’s air quality consultant describes, the Application was corrected and revised during the Bureau’s review process. Exhibit 3. Specifically, Exhibit 3 includes a copy of the revised Section 1 of the Application, submitted to the Bureau on August 9, 2021, that addresses the omissions identified by Sonterra. In the revised Application, Section 1-D, Question 7, identifies the Mescalero Apache Tribe as being within a 10-mile radius of the proposed facility. Ex. 1 attached to Ex. 4, page 3. Question 11 in that same section includes a distance measurement of 116 yards to the nearest residence, school, or occupied structure. *Id.*

Given that these omissions “identified” by Sonterra were addressed in the August 9, 2021, Application revision, the motion must be denied.

IV. Sonterra Lacks Standing to Assert Inadequate Notice Claims on Behalf of Non-Members

Finally, Sonterra has no standing to assert the rights of those who are not members of the association. In its motion, Sonterra alleges that at least two property owners within the half mile radius of the property did not receive certified mail notice of the property. Motion, ¶ 6. To support

this allegation, Sonterra relies on an affidavit submitted by Kathleen Weems who lives at 116 Legacy Lane. According to a map of the Ranches of Sonterra posted on their website, Legacy Lane is not a part of the Ranches of Sonterra Subdivision Boundaries. Exhibit 5, Map of Ranches of Sonterra. Additionally, the map provided by the Lincoln County Assessor's Office included as part of the Application shows that none of the parcels in the Ranches of Sonterra Subdivision sit within a half mile radius of the Roper property. *See* Application, Section 9. Therefore, Sonterra does not have standing to assert deficient notice to property owners within a half mile of the proposed facility.

Roper agrees that such third-party standing can be appropriate at times. In the same case relied upon by Sonterra for lack of notice, third-party standing is also addressed. *Martinez v. Maggiore*, 2003-NMCA-043, ¶ 18, 133 N.M. 472. *Martinez* lays out the third-party standing test to require a party asserting the rights of another:

[1] The litigant must have suffered an “injury in fact,” thus giving him or her a “sufficiently concrete interest” in the outcome of the issue in dispute; [2] the litigant must have a close relation to the third party; and [3] there must be some hindrance to the third party's ability to protect his or her own interests.

Martinez, 2003-NMCA-043, ¶ 18 (quoting *Powers v. Ohio*, 499 U.S. 400, 411, 111 S. Ct. 1364 (1991)). In *Martinez*, the court held that there was third-party standing. However, the present case does not meet the third-party standing requirements. Sonterra has not suffered any “injury in fact” as the concrete batch plant has yet to break ground on the property. Sonterra does not have a close relation to the third-party (Ms. Weems) other than that both parties are located in Alto, New Mexico. Ms. Weems' property is not even located within Sonterra's boundaries. *See* Exhibit 5. Finally, there is no hindrance to Ms. Weems' ability to protect her own interests. As discussed above, Ms. Weems has participated substantially in this matter to date through her actions of (1)

submitting an affidavit to Sonterra's Motion, (2) becoming a party to a related a related civil action against the Roper facility (No. D-1226-CV-2021-00241), and (3) submitting three separate comments to the Bureau regarding Application on June 28, 2021, July 9, 2021, and July 19, 2021. Sonterra, therefore lacks standing to assert Ms. Weems failure to receive notice on her behalf.

V. Conclusion

For the reasons explained above, Sonterra's motion must be denied. Sonterra has not alleged any grounds for which an air permit may not be issued; and Sonterra lacks standing to assert the rights of a third party.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2021, a true copy of the foregoing ***Response to Motion to Dismiss NSR Permit Application*** was served via electronic mail to the following:

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/s/ Louis W. Rose

Louis W. Rose

EXHIBIT 1

**NSR MINOR SOURCE PERMIT APPLICATION
FOR ROPER CONSTRUCTION, INC.
ALTO CBP**

Alto, New Mexico

PREPARED FOR

ROPER CONSTRUCTION, INC.

Dated June 14, 2021

Prepared by

Montrose Air Quality Services, LLC



Mail Application To: New Mexico Environment Department Air Quality Bureau Permits Section 525 Camino de los Marquez, Suite 1 Santa Fe, New Mexico, 87505 Phone: (505) 476-4300 Fax: (505) 476-4375 www.env.nm.gov/aqb		For Department use only: AIRS No.:
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Universal Air Quality Permit Application

Use this application for NOI, NSR, or Title V sources.

Use this application for: the initial application, modifications, technical revisions, and renewals. For technical revisions, complete Sections, 1-A, 1-B, 2-E, 3, 9 and any other sections that are relevant to the requested action; coordination with the Air Quality Bureau permit staff prior to submittal is encouraged to clarify submittal requirements and to determine if more or less than these sections of the application are needed. Use this application for streamline permits as well. **See Section 1-I for submittal instructions for other permits.**

This application is submitted as (check all that apply): ☐ Request for a No Permit Required Determination (no fee)
☐ **Updating** an application currently under NMED review. Include this page and all pages that are being updated (no fee required).
 Construction Status: ☒ Not Constructed ☐ Existing Permitted (or NOI) Facility ☐ Existing Non-permitted (or NOI) Facility
 Minor Source: ☐ a NOI 20.2.73 NMAC ☒ 20.2.72 NMAC application or revision ☐ 20.2.72.300 NMAC Streamline application
 Title V Source: ☐ Title V (new) ☐ Title V renewal ☐ TV minor mod. ☐ TV significant mod. TV Acid Rain: ☐ New ☐ Renewal
 PSD Major Source: ☐ PSD major source (new) ☐ minor modification to a PSD source ☐ a PSD major modification

Acknowledgements:

☒ I acknowledge that a pre-application meeting is available to me upon request. ☐ Title V Operating, Title IV Acid Rain, and NPR applications have no fees.

☒ \$500 NSR application Filing Fee enclosed **OR** ☐ The full permit fee associated with 10 fee points (required w/ streamline applications).

☒ Check No.: 8335 in the amount of \$500

☒ I acknowledge the required submittal format for the hard copy application is printed double sided 'head-to-toe', 2-hole punched (except the Sect. 2 landscape tables is printed 'head-to-head'), numbered tab separators. Incl. a copy of the check on a separate page.

☒ I acknowledge there is an annual fee for permits in addition to the permit review fee: www.env.nm.gov/air-quality/permit-fees-2/.

☐ This facility qualifies for the small business fee reduction per 20.2.75.11.C. NMAC. The full \$500.00 filing fee is included with this application and I understand the fee reduction will be calculated in the balance due invoice. The Small Business Certification Form has been previously submitted or is included with this application. (Small Business Environmental Assistance Program Information: www.env.nm.gov/air-quality/small-biz-eap-2/.)

Citation: Please provide the **low level citation** under which this application is being submitted: **20.2.72.200.A(1) NMAC** (e.g. application for a new minor source would be 20.2.72.200.A NMAC, one example for a Technical Permit Revision is 20.2.72.219.B.1.b NMAC, a Title V acid rain application would be: 20.2.70.200.C NMAC)

Section 1 – Facility Information

Section 1-A: Company Information

		AI # if known (see 1 st 3 to 5 #s of permit IDEA ID No.):	Updating Permit/NOI #:
1	Facility Name: Alto Concrete Batch Plant	Plant primary SIC Code (4 digits): 3273 Plant NAIC code (6 digits): 327320	
a	Facility Street Address (If no facility street address, provide directions from a prominent landmark): The approximate location of this site is 0.35 miles east of the intersection of Highways 48 and 220 north of Ruidoso, NM in Lincoln County.		
2	Plant Operator Company Name: Roper Construction, Inc	Phone/Fax: (575) 973-0440/	
a	Plant Operator Address: 6610 US HWY 380, Carrizozo, NM 88301		

b	Plant Operator's New Mexico Corporate ID or Tax ID: EIN 20-3734510 NM CRS 03-058563-005	
3	Plant Owner(s) name(s): Ryan Roper	Phone/Fax: (575) 973-0440/
a	Plant Owner(s) Mailing Address(s): P.O. Box 969, Alto, NM 88312	
4	Bill To (Company): Roper Construction, Inc	Phone/Fax: (575) 973-0440/
a	Mailing Address: P.O. Box 969, Alto, NM 88312	E-mail: ryan@roper-nm.com
5	<input type="checkbox"/> Preparer: <input checked="" type="checkbox"/> Consultant: Paul Wade, Montrose Air Quality Services, LLC	Phone/Fax: (505) 830-9680/(505) 830-9678
a	Mailing Address: 3500G Comanche Rd NE, Albuquerque, NM 87107	E-mail: pwade@montrose-env.com
6	Plant Operator Contact: Ryan Roper	Phone/Fax: (575) 973-0440/
a	Address: 6610 US HWY 380, Carrizozo, NM 88301	E-mail: ryan@roper-nm.com
7	Air Permit Contact: Ryan Roper	Title: President
a	E-mail: ryan@roper-nm.com	Phone/Fax: (575) 973-0440/
b	Mailing Address: P.O. Box 969, Alto, NM 88312	
c	The designated Air permit Contact will receive all official correspondence (i.e. letters, permits) from the Air Quality Bureau.	

Section 1-B: Current Facility Status

1.a	Has this facility already been constructed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1.b If yes to question 1.a, is it currently operating in New Mexico? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
2	If yes to question 1.a, was the existing facility subject to a Notice of Intent (NOI) (20.2.73 NMAC) before submittal of this application? <input type="checkbox"/> Yes <input type="checkbox"/> No	If yes to question 1.a, was the existing facility subject to a construction permit (20.2.72 NMAC) before submittal of this application? <input type="checkbox"/> Yes <input type="checkbox"/> No
3	Is the facility currently shut down? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	If yes, give month and year of shut down (MM/YY):
4	Was this facility constructed before 8/31/1972 and continuously operated since 1972? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
5	If Yes to question 3, has this facility been modified (see 20.2.72.7.P NMAC) or the capacity increased since 8/31/1972? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
6	Does this facility have a Title V operating permit (20.2.70 NMAC)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the permit No. is: P-
7	Has this facility been issued a No Permit Required (NPR)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the NPR No. is:
8	Has this facility been issued a Notice of Intent (NOI)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the NOI No. is:
9	Does this facility have a construction permit (20.2.72/20.2.74 NMAC)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the permit No. is:
10	Is this facility registered under a General permit (GCP-1, GCP-2, etc.)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the register No. is:

Section 1-C: Facility Input Capacity & Production Rate

1	What is the facility's maximum input capacity, specify units (reference here and list capacities in Section 20, if more room is required)			
a	Current	Hourly:	Daily:	Annually:
b	Proposed	Hourly: 468.9 tons/hour	Daily: 7033.5 tons/hour	Annually: 1,875,500 tons/hour
2	What is the facility's maximum production rate, specify units (reference here and list capacities in Section 20, if more room is required)			
a	Current	Hourly:	Daily:	Annually:
b	Proposed	Hourly: 125 cubic yards/hour	Daily: 1875 cubic yards/day	Annually: 500,000 cubic yards/yr

Section 1-D: Facility Location Information

1	Section: 27	Range: 13E	Township: 10S	County: Lincoln	Elevation (ft): 7240
2	UTM Zone: <input type="checkbox"/> 12 or <input checked="" type="checkbox"/> 13			Datum: <input type="checkbox"/> NAD 27 <input checked="" type="checkbox"/> NAD 83 <input type="checkbox"/> WGS 84	
a	UTM E (in meters, to nearest 10 meters): 438,240			UTM N (in meters, to nearest 10 meters): 3,697,950	
b	AND Latitude (deg., min., sec.): 33°, 25', 08.8511" N			Longitude (deg., min., sec.): 105°, 39', 51.6108" W	
3	Name and zip code of nearest New Mexico town: Ruidoso, 88345				
4	Detailed Driving Instructions from nearest NM town (attach a road map if necessary): From of the intersection of Highways 48 and 70 in Ruidoso travel north on Highway 48 for 10.2 miles and turn east on Highway 220. Travel east for 0.38 miles to the site on the north side of Highway 220.				
5	The facility is 8.2 miles north of Ruidoso.				
6	Status of land at facility (check one): <input checked="" type="checkbox"/> Private <input type="checkbox"/> Indian/Pueblo <input type="checkbox"/> Federal BLM <input type="checkbox"/> Federal Forest Service <input type="checkbox"/> Other (specify)				
7	List all municipalities, Indian tribes, and counties within a ten (10) mile radius (20.2.72.203.B.2 NMAC) of the property on which the facility is proposed to be constructed or operated: Lincoln County, Ruidoso, Ruidoso Downs, Capitan				
8	20.2.72 NMAC applications only: Will the property on which the facility is proposed to be constructed or operated be closer than 50 km (31 miles) to other states, Bernalillo County, or a Class I area (see www.env.nm.gov/aqb/modeling/class1areas.html)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (20.2.72.206.A.7 NMAC) If yes, list all with corresponding distances in kilometers: White Mountain Wilderness Area - 1.9 kilometers				
9	Name nearest Class I area: White Mountain Wilderness Area				
10	Shortest distance (in km) from facility boundary to the boundary of the nearest Class I area (to the nearest 10 meters): 1.91 km				
11	Distance (meters) from the perimeter of the Area of Operations (AO is defined as the plant site inclusive of all disturbed lands, including mining overburden removal areas) to nearest residence, school or occupied structure:				
12	Method(s) used to delineate the Restricted Area: Fencing and signage "Restricted Area" is an area to which public entry is effectively precluded. Effective barriers include continuous fencing, continuous walls, or other continuous barriers approved by the Department, such as rugged physical terrain with steep grade that would require special equipment to traverse. If a large property is completely enclosed by fencing, a restricted area within the property may be identified with signage only. Public roads cannot be part of a Restricted Area.				
13	Does the owner/operator intend to operate this source as a portable stationary source as defined in 20.2.72.7.X NMAC? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No A portable stationary source is not a mobile source, such as an automobile, but a source that can be installed permanently at one location or that can be re-installed at various locations, such as a hot mix asphalt plant that is moved to different job sites.				
14	Will this facility operate in conjunction with other air regulated parties on the same property? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, what is the name and permit number (if known) of the other facility?				

Section 1-E: Proposed Operating Schedule (The 1-E.1 & 1-E.2 operating schedules may become conditions in the permit.)

1	Facility maximum operating ($\frac{\text{hours}}{\text{day}}$): 18	($\frac{\text{days}}{\text{week}}$): 7	($\frac{\text{weeks}}{\text{year}}$): 52	($\frac{\text{hours}}{\text{year}}$): 4509
2	Facility's maximum daily operating schedule (if less than 24 $\frac{\text{hours}}{\text{day}}$)? Start: 3:00		XAM <input type="checkbox"/> PM	End: 9:00 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
3	Month and year of anticipated start of construction: Upon Permit Issuance			
4	Month and year of anticipated construction completion: 2 months			
5	Month and year of anticipated startup of new or modified facility: 2 months			
6	Will this facility operate at this site for more than one year? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			

Section 1-F: Other Facility Information

1	Are there any current Notice of Violations (NOV), compliance orders, or any other compliance or enforcement issues related to this facility? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, specify:
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a	If yes, NOV date or description of issue:		NOV Tracking No:
b	Is this application in response to any issue listed in 1-F, 1 or 1a above? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide the 1c & 1d info below:		
c	Document Title:	Date:	Requirement # (or page # and paragraph #):
d	Provide the required text to be inserted in this permit:		
2	Is air quality dispersion modeling or modeling waiver being submitted with this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
3	Does this facility require an "Air Toxics" permit under 20.2.72.400 NMAC & 20.2.72.502, Tables A and/or B? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
4	Will this facility be a source of federal Hazardous Air Pollutants (HAP)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
a	If Yes, what type of source? <input type="checkbox"/> Major (<input type="checkbox"/> ≥10 tpy of any single HAP OR <input type="checkbox"/> ≥25 tpy of any combination of HAPS) OR <input checked="" type="checkbox"/> Minor (<input checked="" type="checkbox"/> <10 tpy of any single HAP AND <input type="checkbox"/> <25 tpy of any combination of HAPS)		
5	Is any unit exempt under 20.2.72.202.B.3 NMAC? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
a	If yes, include the name of company providing commercial electric power to the facility: _____ Commercial power is purchased from a commercial utility company, which specifically does not include power generated on site for the sole purpose of the user.		

Section 1-G: Streamline Application

(This section applies to 20.2.72.300 NMAC Streamline applications only)

1	<input type="checkbox"/> I have filled out Section 18, "Addendum for Streamline Applications." <input checked="" type="checkbox"/> N/A (This is not a Streamline application.)
---	--

Section 1-H: Current Title V Information - Required for all applications from TV Sources

(Title V-source required information for all applications submitted pursuant to 20.2.72 NMAC (Minor Construction Permits), or 20.2.74/20.2.79 NMAC (Major PSD/NNSR applications), and/or 20.2.70 NMAC (Title V))

1	Responsible Official (R.O.) (20.2.70.300.D.2 NMAC):		Phone:
a	R.O. Title:	R.O. e-mail:	
b	R. O. Address:		
2	Alternate Responsible Official (20.2.70.300.D.2 NMAC):		Phone:
a	A. R.O. Title:	A. R.O. e-mail:	
b	A. R. O. Address:		
3	Company's Corporate or Partnership Relationship to any other Air Quality Permittee (List the names of any companies that have operating (20.2.70 NMAC) permits and with whom the applicant for this permit has a corporate or partnership relationship):		
4	Name of Parent Company ("Parent Company" means the primary name of the organization that owns the company to be permitted wholly or in part.):		
a	Address of Parent Company:		
5	Names of Subsidiary Companies ("Subsidiary Companies" means organizations, branches, divisions or subsidiaries, which are owned, wholly or in part, by the company to be permitted.):		
6	Telephone numbers & names of the owners' agents and site contacts familiar with plant operations:		
7	Affected Programs to include Other States, local air pollution control programs (i.e. Bernalillo) and Indian tribes: Will the property on which the facility is proposed to be constructed or operated be closer than 80 km (50 miles) from other states, local pollution control programs, and Indian tribes and pueblos (20.2.70.402.A.2 and 20.2.70.7.B)? If yes, state which ones and provide the distances in kilometers:		

Section 1-I – Submittal Requirements

Each 20.2.73 NMAC (NOI), a 20.2.70 NMAC (Title V), a 20.2.72 NMAC (NSR minor source), or 20.2.74 NMAC (PSD) application package shall consist of the following:

Hard Copy Submittal Requirements:

- 1) One hard copy **original signed and notarized application package printed double sided 'head-to-toe' 2-hole punched** as we bind the document on top, not on the side; except Section 2 (landscape tables), which should be **head-to-head**. Please use **numbered tab separators** in the hard copy submittal(s) as this facilitates the review process. For NOI submittals only, hard copies of UA1, Tables 2A, 2D & 2F, Section 3 and the signed Certification Page are required. **Please include a copy of the check on a separate page.**
- 2) If the application is for a minor NSR, PSD, NNSR, or Title V application, include one working hard **copy** for Department use. This **copy** should be printed in book form, 3-hole punched, and **must be double sided**. Note that this is in addition to the head-to-toe 2-hole punched copy required in 1) above. Minor NSR Technical Permit revisions (20.2.72.219.B NMAC) only need to fill out Sections 1-A, 1-B, 3, and should fill out those portions of other Section(s) relevant to the technical permit revision. TV Minor Modifications need only fill out Sections 1-A, 1-B, 1-H, 3, and those portions of other Section(s) relevant to the minor modification. NMED may require additional portions of the application to be submitted, as needed.
- 3) The entire NOI or Permit application package, including the full modeling study, should be submitted electronically. Electronic files for applications for NOIs, any type of General Construction Permit (GCP), or technical revisions to NSRs must be submitted with compact disk (CD) or digital versatile disc (DVD). For these permit application submittals, **two CD** copies are required (in sleeves, not crystal cases, please), with additional CD copies as specified below. NOI applications require only a **single CD** submittal. Electronic files for other New Source Review (construction) permits/permit modifications or Title V permits/permit modifications can be submitted on CD/DVD or sent through AQB's secure file transfer service.

Electronic files sent by (check one):

☐ CD/DVD attached to paper application

☐ secure electronic transfer. Air Permit Contact Name _____

Email _____

Phone number _____

a. If the file transfer service is chosen by the applicant, after receipt of the application, the Bureau will email the applicant with instructions for submitting the electronic files through a secure file transfer service. Submission of the electronic files through the file transfer service needs to be completed within 3 business days after the invitation is received, so the applicant should ensure that the files are ready when sending the hard copy of the application. The applicant will not need a password to complete the transfer. **Do not use the file transfer service for NOIs, any type of GCP, or technical revisions to NSR permits.**

- 4) Optionally, the applicant may submit the files with the application on compact disk (CD) or digital versatile disc (DVD) following the instructions above and the instructions in 5 for applications subject to PSD review.
- 5) If **air dispersion modeling** is required by the application type, include the **NMED Modeling Waiver** and/or electronic air dispersion modeling report, input, and output files. The dispersion modeling **summary report only** should be submitted as hard copy(ies) unless otherwise indicated by the Bureau.
- 6) If the applicant submits the electronic files on CD and the application is subject to PSD review under 20.2.74 NMAC (PSD) or NNSR under 20.2.79 NMC include,
 - a. one additional CD copy for US EPA,
 - b. one additional CD copy for each federal land manager affected (NPS, USFS, FWS, USDI) and,
 - c. one additional CD copy for each affected regulatory agency other than the Air Quality Bureau.

If the application is submitted electronically through the secure file transfer service, these extra CDs do not need to be submitted.

Electronic Submittal Requirements [in addition to the required hard copy(ies)]:

- 1) All required electronic documents shall be submitted as 2 separate CDs or submitted through the AQB secure file transfer service. Submit a single PDF document of the entire application as submitted and the individual documents comprising the application.
- 2) The documents should also be submitted in Microsoft Office compatible file format (Word, Excel, etc.) allowing us to access the text and formulas in the documents (copy & paste). Any documents that cannot be submitted in a Microsoft Office compatible

format shall be saved as a PDF file from within the electronic document that created the file. If you are unable to provide Microsoft office compatible electronic files or internally generated PDF files of files (items that were not created electronically: i.e. brochures, maps, graphics, etc.), submit these items in hard copy format. We must be able to review the formulas and inputs that calculated the emissions.

- 3) It is preferred that this application form be submitted as 4 electronic files (**3 MSWord docs**: Universal Application section 1 [UA1], Universal Application section 3-19 [UA3], and Universal Application 4, the modeling report [UA4]) and **1 Excel file** of the tables (Universal Application section 2 [UA2]). Please include as many of the 3-19 Sections as practical in a single MS Word electronic document. Create separate electronic file(s) if a single file becomes too large or if portions must be saved in a file format other than MS Word.
- 4) The **electronic file names** shall be a maximum of 25 characters long (including spaces, if any). The format of the electronic Universal Application shall be in the format: "A-3423-FacilityName". The "A" distinguishes the file as an application submittal, as opposed to other documents the Department itself puts into the database. Thus, all electronic application submittals should begin with "A-". Modifications to existing facilities should use the **core permit number** (i.e. '3423') the Department assigned to the facility as the next 4 digits. Use 'XXXX' for new facility applications. The format of any separate electronic submittals (additional submittals such as non-Word attachments, re-submittals, application updates) and Section document shall be in the format: "A-3423-9-description", where "9" stands for the **section #** (in this case Section 9-Public Notice). Please refrain, as much as possible, from submitting any scanned documents as this file format is extremely large, which uses up too much storage capacity in our database. Please take the time to fill out the **header information** throughout all submittals as this will identify any loose pages, including the Application Date (date submitted) & Revision number (0 for original, 1, 2, etc.; which will help keep track of subsequent partial update(s) to the original submittal. Do not use special symbols (#, @, etc.) in file names. The footer information should not be modified by the applicant.

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EXHIBIT 2



July 22, 2021

Certified Mail No. 7019 0700 0002 1018 7409

Ryan Roper
President
Roper Construction Inc
PO Box 969
Alto, NM 88312

Re: Air Quality Permit Application No. 9295 (Agency Interest No. 40076 - PRN20210001)

Dear Ryan Roper:

This letter is in response to your air quality permit application dated June 14, 2021 to construct the Roper - Alto Concrete Batch Plant near Ruidoso, New Mexico in Lincoln County. The application was received by the Department on June 22, 2021. This letter addresses the Completeness Determination, Legal Notice and Comment, and Invoice for Permit Fee and is intended for use by the applicant, interested individuals and groups, and the appropriate NMED Field Office.

Completeness Determination

A preliminary review has been completed and the information provided is sufficient to complete an evaluation of your permit application. Therefore, your application was ruled administratively complete on July 22, 2021. Under the requirements of 20.2.72 NMAC, the Department anticipates issuing or denying this permit on or before October 20, 2021.

Public Notice and Comment

The Department will publish a legal notice that will be sent to the NMED district or field office nearest the source (see enclosed). It describes the proposed facility, a summary of estimated emissions and ambient impact, the Department's preliminary intent to issue the permit, and the provisions for public comment.

The Department's analysis includes the Statement of Basis and is prepared as part of the technical review of the permit application. All interested persons have thirty (30) days from the date the public notice is published to notify the Department in writing of their interest in the permit application. The Department will notify all such persons of when and where the Department's analysis may be reviewed. Interested persons may review the Department's analysis for thirty (30) days after it becomes available at the NMED district or field office nearest the source. Written comments on the analysis or permit application and requests for a public hearing may be submitted to the Department during this second thirty (30) day period or any time before the permit is issued or denied.

The Department will hold a public hearing if the Secretary determines there is significant public interest in the permit application. The Department will also determine the time, date, and place of the hearing and shall notify

Exhibit 2

the applicant and the public. At the hearing, all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing, and to examine witnesses testifying at the hearing.

After the permit is issued or denied, the Department will mail written notice of the action taken on a permit application to all persons who submitted written comments or evidence on the application.

Invoice for Permit Fee

In accordance with 20.2.75 NMAC, this letter includes an invoice for the required permit fee in the amount of \$12460.00. This fee is due within thirty (30) days of the date ruled administratively complete. 20.2.75 NMAC states that the Department shall deny any permit application or request for permit revision if the required permit fee has not been paid. This fee is not refundable. An enforcement/compliance fee will also be assessed annually. All fees shall be remitted in the form of a corporate check, certified check, or money order made payable to the New Mexico Environment Department and shall be accompanied by the enclosed remittance slip. Fees shall be submitted to NM Environment Department, AQB at the address shown on the invoice.

20.2.72.200.E NMAC states: "for all sources subject to this regulation applications for permits shall be filed prior to the commencement of construction, modification, or installation. Regardless of the anticipated commencement date, no construction, modification, or installation shall begin prior to issuance of the permit."

If you have any questions please contact me in Santa Fe at 505-476-4360.

Sincerely,

Deepika
Saikrishnan

Digitally signed by
Deepika Saikrishnan
Date: 2021.07.22
11:52:44 -06'00'

Deepika Saikrishnan
Air Permit Specialist
Permits Section
Air Quality Bureau

cc via email: Paul Wade, Montrose Air Quality Services, LLC, pwade@montrose-env.com

Enclosures Sent with Letter:
Legal Notice – Attachment A
Permit fee invoice

LEGAL NOTICE
and
Preliminary Determination for an Air Quality Permit for
Roper Construction Inc

Roper Construction Inc at PO Box 969, Alto, NM has submitted an air quality permit application to the Air Quality Bureau (AQB), New Mexico Environment Department (NMED) for an air quality permit to construct the Alto Concrete Batch Plant. The application file has been assigned Permit No. 9295 and TEMPO Agency Interest No. 40076. The exact location of the facility will be at latitude and longitude decimal degrees: 33.419120, -105.664358 Datum: NAD 83. To aid in locating this facility, the approximate location is 8.2 mi N of Ruidoso in Lincoln County, NM.

The proposed construction will consist of a 125 cubic yard per hour concrete batch plant (CBP) that will include a feed hopper with conveyor, 4-bin cold aggregate bin, aggregate weigh batcher with conveyor, cement/fly ash split silo with baghouse, cement/fly ash weigh batcher with baghouse, concrete mixer truck loading area with baghouse, and natural gas hot water heaters. The plant will be powered by commercial line power. Processed concrete will be transported from the CBP to off-site sales. Haul roads will be paved and maintained to reduce particulate emissions from truck traffic.

Total air pollutant emissions to the atmosphere are estimated to be approximately: Nitrogen Oxides (NO_x) at .28 tons per year (tpy); Carbon Monoxide (CO) at .23 tpy; Volatile Organic Compounds (VOC) at .031 tpy; Sulfur Dioxide (SO₂) at .0030 tpy; Total Suspended Particulate Matter (TSP) at 5.72 tpy; Particulate Matter 10 microns or less (PM₁₀) at 1.95 tpy; and Particulate Matter 2.5 microns or less (PM_{2.5}) at .37 tpy ; and greenhouse gas (CO₂e) < 75,000 tpy. These emission estimates could change slightly during the course of the Department's review of the application.

The NMED has conducted a preliminary review of the information submitted with the permit application. The preliminary review and applicant's analysis of ambient air quality impacts indicates that the facility's air emissions will meet the air quality standards for NO_x, CO, SO₂, PM₁₀, and PM_{2.5}. VOCs are a pre-cursor to ozone and the NMED does not require an individual ozone ambient impact analysis for each application. To determine compliance with national ambient air quality standards for ozone, NMED uses air monitors to monitor ozone concentrations. A full review will evaluate the estimated emission rates for the pollutants listed in this public notice and determine compliance with ambient air quality requirements and standards.

Based on the applicant's analysis, a preliminary determination is that this facility will comply with the requirements of Title 20, New Mexico Administrative Code (NMAC), Chapter 2, Parts 3, 7, 61, 72, 73, 75 and 80; 40 CFR 50 and the New Mexico Air Quality Control Act. Therefore, the preliminary intent of NMED is to issue the air quality permit on or before October 20, 2021. This source is a PSD minor source according to 20.2.74 NMAC.

To ensure compliance with state and federal air regulations, the permit is expected to include conditions that limit the emissions, hours of operation, production rate, and conditions that will require record keeping and reporting to the Department.

Attachment A: Legal Notice

Due to the public health emergency order, certain NMED offices are closed to the public. The permit application is available for review on the AQB Public Notices of Permitting Actions website www.env.nm.gov/air-quality/public-notice-of-permitting-actions/.

All interested persons have thirty (30) days from the date this notice is published, to notify the Department in writing of their interest in the permit application. The written comments should refer to the company name, facility name and Permit No. (or send a copy of this notice along with your comments). The written comments shall state the nature of the issues raised and how it relates to the requirements of applicable state and federal air quality regulations and the Clean Air Act. The written comments should be mailed to Deepika Saikrishnan, New Mexico Environment Dept., Air Quality Bureau, Permit Section, 525 Camino de los Marquez Suite 1, Santa Fe, NM 87505-1816, or submitted by email to Deepika.Saikrishnan@state.nm.us.

The Department will notify all persons, who have provided written comments as to when and where the Department's analysis may be reviewed. Although all written comments will be made part of the public record, any person who does not express interest in writing before the end of this first thirty (30) day period will not receive such notification.

If the Department receives written public comment before the end of the Department's thirty (30) day public notice, the Department's analysis will be made available for review for thirty (30) days at the NMED district or field office nearest to the source before the permit will be issued. Written comments on the analysis or permit application may be submitted to the Department during this second thirty (30) day period or at any time before the permit is issued or denied.

Questions or comments not intended to be part of the public record can be directed to Deepika Saikrishnan at 505-476-4360. General information about air quality and the permitting process can be found at the Air Quality Bureau's web site. The regulation dealing with public participation in the permit review process is 20.2.72.206 NMAC. This regulation can be found in the "Permits" section of this web site. Este es un aviso de la oficina de Calidad del Aire del Departamento del Medio Ambiente de Nuevo México, acerca de las emisiones producidas por un establecimiento en esta área. Si usted desea información en español, por favor comuníquese con esa oficina al teléfono 505-476-5557.

Notice of Non-Discrimination

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, or if you believe that you have been discriminated against with respect to a NMED program or activity, you may contact: Kathryn Becker, Non-Discrimination Coordinator, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. You may also visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

EXHIBIT 3

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT

**IN THE MATTER OF THE APPLICATION
OF ROPER CONTRUCTION INC.
FOR AN AIR QUALITY PERMIT
NO. 9295, ALITO CONCRETE BATCH PLANT**

AQB 21-57(P)

AFFIDAVIT OF PAUL WADE

Paul Wade deposes and states as follows:

1. I am over the age of 18 years and am otherwise competent to make this affidavit

The matters set forth below are true based on my personal knowledge and information.

2. I am a Principal/Senior Project Manager at Montrose Air Quality Services in Albuquerque, New Mexico ("Montrose").

3. I have prepared a significant number of permit applications under Part 72, and I followed the same process here.

4. I prepared the air permit application ("Application") for Roper Construction, Inc. ("Roper") to construct a concrete batch plant at the approximate location 0.35 miles east of the intersection of Highways 48 and 220 north of Ruidoso, NM in Lincoln County, which is the subject of this public hearing.

5. During the permit review process, I submitted several revised sections of the permit application to the permit writer that addressed some concerns that were raised by the Air Quality Bureau.

6. Exhibit 1 is a true and correct copy of the revised Application Section 1 I submitted to NMED on August 10, 2021.

7. As part of preparing the Application, I prepared Roper's notice that was sent out by Montrose to owners of record as shown on the most recent tax schedule.

8. First, I called the Lincoln County Assessor's Office on May 19, 2021 and requested a list of the property owners within a half mile radius of the Roper property.

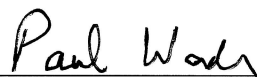
9. On May 19, 2021, Mr. Thornton from the Assessor's Office emailed me a Comma Separated Value Spreadsheet named PARCELS_(3).csv. The email is attached to this Affidavit as Exhibit 2.

10. The PARCELS_(3).csv file included the names and addresses of the property owners within a half mile radius from the site of the proposed facility.

11. On May 20, 2021, I responded to Mr. Thornton and requested a map that showed the boundary used to generate the list of property owners. *See* Exhibit 2.

12. On May 20, 2021, Mr. Serna sent me an image of the map used the Lincoln County Assessors to set the half mile boundary. Exhibit 3.

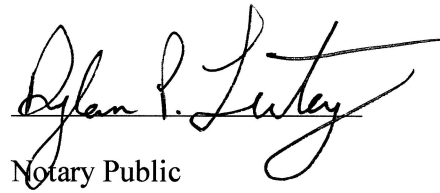
13. Using the information provided by the Lincoln County Assessor I prepared the public notices to the property owners and sent them via certified mail.



Paul Wade

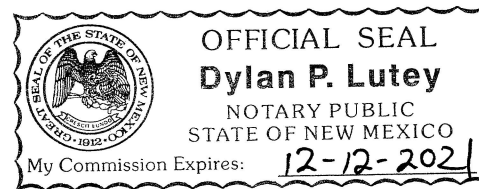
11/19/2021
Date

Subscribed, sworn to and acknowledged before me on this 19th day of November 2021, by Paul Wade.


Notary Public

State of New Mexico

County of Bernalillo



My Commission Expires: 12-12-2021

Mail Application To: New Mexico Environment Department Air Quality Bureau Permits Section 525 Camino de los Marquez, Suite 1 Santa Fe, New Mexico, 87505 Phone: (505) 476-4300 Fax: (505) 476-4375 www.env.nm.gov/aqb		For Department use only: AIRS No.:
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Universal Air Quality Permit Application

Use this application for NOI, NSR, or Title V sources.

Use this application for: the initial application, modifications, technical revisions, and renewals. For technical revisions, complete Sections, 1-A, 1-B, 2-E, 3, 9 and any other sections that are relevant to the requested action; coordination with the Air Quality Bureau permit staff prior to submittal is encouraged to clarify submittal requirements and to determine if more or less than these sections of the application are needed. Use this application for streamline permits as well. **See Section 1-I for submittal instructions for other permits.**

This application is submitted as (check all that apply): ☐ Request for a No Permit Required Determination (no fee)
☐ **Updating** an application currently under NMED review. Include this page and all pages that are being updated (no fee required).
 Construction Status: ☒ Not Constructed ☐ Existing Permitted (or NOI) Facility ☐ Existing Non-permitted (or NOI) Facility
 Minor Source: ☐ a NOI 20.2.73 NMAC ☒ 20.2.72 NMAC application or revision ☐ 20.2.72.300 NMAC Streamline application
 Title V Source: ☐ Title V (new) ☐ Title V renewal ☐ TV minor mod. ☐ TV significant mod. TV Acid Rain: ☐ New ☐ Renewal
 PSD Major Source: ☐ PSD major source (new) ☐ minor modification to a PSD source ☐ a PSD major modification

Acknowledgements:

☒ I acknowledge that a pre-application meeting is available to me upon request. ☐ Title V Operating, Title IV Acid Rain, and NPR applications have no fees.

☒ \$500 NSR application Filing Fee enclosed **OR** ☐ The full permit fee associated with 10 fee points (required w/ streamline applications).

☒ Check No.: 8335 in the amount of \$500

☒ I acknowledge the required submittal format for the hard copy application is printed double sided 'head-to-toe', 2-hole punched (except the Sect. 2 landscape tables is printed 'head-to-head'), numbered tab separators. Incl. a copy of the check on a separate page.

☒ I acknowledge there is an annual fee for permits in addition to the permit review fee: www.env.nm.gov/air-quality/permit-fees-2/.

☐ This facility qualifies for the small business fee reduction per 20.2.75.11.C. NMAC. The full \$500.00 filing fee is included with this application and I understand the fee reduction will be calculated in the balance due invoice. The Small Business Certification Form has been previously submitted or is included with this application. (Small Business Environmental Assistance Program Information: www.env.nm.gov/air-quality/small-biz-eap-2/.)

Citation: Please provide the **low level citation** under which this application is being submitted: **20.2.72.200.A(1) NMAC** (e.g. application for a new minor source would be 20.2.72.200.A NMAC, one example for a Technical Permit Revision is 20.2.72.219.B.1.b NMAC, a Title V acid rain application would be: 20.2.70.200.C NMAC)

Section 1 – Facility Information

Section 1-A: Company Information

		AI # if known (see 1 st 3 to 5 #s of permit IDEA ID No.):	Updating Permit/NOI #:
1	Facility Name: Alto Concrete Batch Plant	Plant primary SIC Code (4 digits): 3273	
		Plant NAIC code (6 digits): 327320	
a	Facility Street Address (If no facility street address, provide directions from a prominent landmark): The approximate location of this site is 0.35 miles east of the intersection of Highways 48 and 220 north of Ruidoso, NM in Lincoln County.		
2	Plant Operator Company Name: Roper Construction, Inc	Phone/Fax: (575) 973-0440/	
a	Plant Operator Address: 6610 US HWY 380, Carrizozo, NM 88301		

b	Plant Operator's New Mexico Corporate ID or Tax ID: EIN 20-3734510 NM CRS 03-058563-005	
3	Plant Owner(s) name(s): Ryan Roper	Phone/Fax: (575) 973-0440/
a	Plant Owner(s) Mailing Address(s): P.O. Box 969, Alto, NM 88312	
4	Bill To (Company): Roper Construction, Inc	Phone/Fax: (575) 973-0440/
a	Mailing Address: P.O. Box 969, Alto, NM 88312	E-mail: ryan@roper-nm.com
5	<input type="checkbox"/> Preparer: <input checked="" type="checkbox"/> Consultant: Paul Wade, Montrose Air Quality Services, LLC	Phone/Fax: (505) 830-9680/(505) 830-9678
a	Mailing Address: 3500G Comanche Rd NE, Albuquerque, NM 87107	E-mail: pwade@montrose-env.com
6	Plant Operator Contact: Ryan Roper	Phone/Fax: (575) 973-0440/
a	Address: 6610 US HWY 380, Carrizozo, NM 88301	E-mail: ryan@roper-nm.com
7	Air Permit Contact: Ryan Roper	Title: President
a	E-mail: ryan@roper-nm.com	Phone/Fax: (575) 973-0440/
b	Mailing Address: P.O. Box 969, Alto, NM 88312	
c	The designated Air permit Contact will receive all official correspondence (i.e. letters, permits) from the Air Quality Bureau.	

Section 1-B: Current Facility Status

1.a	Has this facility already been constructed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1.b If yes to question 1.a, is it currently operating in New Mexico? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
2	If yes to question 1.a, was the existing facility subject to a Notice of Intent (NOI) (20.2.73 NMAC) before submittal of this application? <input type="checkbox"/> Yes <input type="checkbox"/> No	If yes to question 1.a, was the existing facility subject to a construction permit (20.2.72 NMAC) before submittal of this application? <input type="checkbox"/> Yes <input type="checkbox"/> No
3	Is the facility currently shut down? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	If yes, give month and year of shut down (MM/YY):
4	Was this facility constructed before 8/31/1972 and continuously operated since 1972? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
5	If Yes to question 3, has this facility been modified (see 20.2.72.7.P NMAC) or the capacity increased since 8/31/1972? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
6	Does this facility have a Title V operating permit (20.2.70 NMAC)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the permit No. is: P-
7	Has this facility been issued a No Permit Required (NPR)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the NPR No. is:
8	Has this facility been issued a Notice of Intent (NOI)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the NOI No. is:
9	Does this facility have a construction permit (20.2.72/20.2.74 NMAC)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the permit No. is:
10	Is this facility registered under a General permit (GCP-1, GCP-2, etc.)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the register No. is:

Section 1-C: Facility Input Capacity & Production Rate

1	What is the facility's maximum input capacity, specify units (reference here and list capacities in Section 20, if more room is required)			
a	Current	Hourly:	Daily:	Annually:
b	Proposed	Hourly: 242.6 tons/hour	Daily: 3639.0 tons/day	Annually: 970,250 tons/year
2	What is the facility's maximum production rate, specify units (reference here and list capacities in Section 20, if more room is required)			
a	Current	Hourly:	Daily:	Annually:
b	Proposed	Hourly: 125 cubic yards/hour	Daily: 1875 cubic yards/day	Annually: 500,000 cubic yards/yr

Section 1-D: Facility Location Information

1	Section: 27	Range: 13E	Township: 10S	County: Lincoln	Elevation (ft): 7240
2	UTM Zone: <input type="checkbox"/> 12 or <input checked="" type="checkbox"/> 13			Datum: <input type="checkbox"/> NAD 27 <input checked="" type="checkbox"/> NAD 83 <input type="checkbox"/> WGS 84	
a	UTM E (in meters, to nearest 10 meters): 438,240			UTM N (in meters, to nearest 10 meters): 3,697,950	
b	AND Latitude (deg., min., sec.): 33°, 25', 08.8511" N			Longitude (deg., min., sec.): 105°, 39', 51.6108" W	
3	Name and zip code of nearest New Mexico town: Ruidoso, 88345				
4	Detailed Driving Instructions from nearest NM town (attach a road map if necessary): From of the intersection of Highways 48 and 70 in Ruidoso travel north on Highway 48 for 10.2 miles and turn east on Highway 220. Travel east for 0.38 miles to the site on the north side of Highway 220.				
5	The facility is 8.2 miles north of Ruidoso.				
6	Status of land at facility (check one): <input checked="" type="checkbox"/> Private <input type="checkbox"/> Indian/Pueblo <input type="checkbox"/> Federal BLM <input type="checkbox"/> Federal Forest Service <input type="checkbox"/> Other (specify)				
7	List all municipalities, Indian tribes, and counties within a ten (10) mile radius (20.2.72.203.B.2 NMAC) of the property on which the facility is proposed to be constructed or operated: Lincoln County, Ruidoso, Ruidoso Downs, Capitan, Mescalero Indian				
8	20.2.72 NMAC applications only: Will the property on which the facility is proposed to be constructed or operated be closer than 50 km (31 miles) to other states, Bernalillo County, or a Class I area (see www.env.nm.gov/aqb/modeling/class1areas.html)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (20.2.72.206.A.7 NMAC) If yes, list all with corresponding distances in kilometers: White Mountain Wilderness Area - 1.9 kilometers				
9	Name nearest Class I area: White Mountain Wilderness Area				
10	Shortest distance (in km) from facility boundary to the boundary of the nearest Class I area (to the nearest 10 meters): 1.91 km				
11	Distance (meters) from the perimeter of the Area of Operations (AO is defined as the plant site inclusive of all disturbed lands, including mining overburden removal areas) to nearest residence, school or occupied structure: 116 yards				
12	Method(s) used to delineate the Restricted Area: Fencing and signage "Restricted Area" is an area to which public entry is effectively precluded. Effective barriers include continuous fencing, continuous walls, or other continuous barriers approved by the Department, such as rugged physical terrain with steep grade that would require special equipment to traverse. If a large property is completely enclosed by fencing, a restricted area within the property may be identified with signage only. Public roads cannot be part of a Restricted Area.				
13	Does the owner/operator intend to operate this source as a portable stationary source as defined in 20.2.72.7.X NMAC? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No A portable stationary source is not a mobile source, such as an automobile, but a source that can be installed permanently at one location or that can be re-installed at various locations, such as a hot mix asphalt plant that is moved to different job sites.				
14	Will this facility operate in conjunction with other air regulated parties on the same property? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, what is the name and permit number (if known) of the other facility?				

Section 1-E: Proposed Operating Schedule (The 1-E.1 & 1-E.2 operating schedules may become conditions in the permit.)

1	Facility maximum operating ($\frac{\text{hours}}{\text{day}}$): 18	($\frac{\text{days}}{\text{week}}$): 7	($\frac{\text{weeks}}{\text{year}}$): 52	($\frac{\text{hours}}{\text{year}}$): 4509
2	Facility's maximum daily operating schedule (if less than 24 $\frac{\text{hours}}{\text{day}}$)? Start: 3:00		XAM <input type="checkbox"/> PM	End: 9:00 <input type="checkbox"/> AM <input checked="" type="checkbox"/> XPM
3	Month and year of anticipated start of construction: Upon Permit Issuance			
4	Month and year of anticipated construction completion: 2 months			
5	Month and year of anticipated startup of new or modified facility: 2 months			
6	Will this facility operate at this site for more than one year? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			

Section 1-F: Other Facility Information

1	Are there any current Notice of Violations (NOV), compliance orders, or any other compliance or enforcement issues related to this facility? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, specify:		
a	If yes, NOV date or description of issue:	NOV Tracking No:	
b	Is this application in response to any issue listed in 1-F, 1 or 1a above? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide the 1c & 1d info below:		
c	Document Title:	Date:	Requirement # (or page # and paragraph #):
d	Provide the required text to be inserted in this permit:		
2	Is air quality dispersion modeling or modeling waiver being submitted with this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
3	Does this facility require an "Air Toxics" permit under 20.2.72.400 NMAC & 20.2.72.502, Tables A and/or B? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
4	Will this facility be a source of federal Hazardous Air Pollutants (HAP)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
a	If Yes, what type of source? <input type="checkbox"/> Major (<input type="checkbox"/> ≥ 10 tpy of any single HAP OR <input type="checkbox"/> ≥ 25 tpy of any combination of HAPS) OR <input checked="" type="checkbox"/> Minor (<input checked="" type="checkbox"/> < 10 tpy of any single HAP AND <input type="checkbox"/> < 25 tpy of any combination of HAPS)		
5	Is any unit exempt under 20.2.72.202.B.3 NMAC? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
a	If yes, include the name of company providing commercial electric power to the facility: _____ Commercial power is purchased from a commercial utility company, which specifically does not include power generated on site for the sole purpose of the user.		

Section 1-G: Streamline Application

(This section applies to 20.2.72.300 NMAC Streamline applications only)

1	<input type="checkbox"/> I have filled out Section 18, "Addendum for Streamline Applications." <input checked="" type="checkbox"/> N/A (This is not a Streamline application.)
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Section 1-H: Current Title V Information - Required for all applications from TV Sources

(Title V-source required information for all applications submitted pursuant to 20.2.72 NMAC (Minor Construction Permits), or 20.2.74/20.2.79 NMAC (Major PSD/NNSR applications), and/or 20.2.70 NMAC (Title V))

1	Responsible Official (R.O.) (20.2.70.300.D.2 NMAC):		Phone:
a	R.O. Title:	R.O. e-mail:	
b	R. O. Address:		
2	Alternate Responsible Official (20.2.70.300.D.2 NMAC):		Phone:
a	A. R.O. Title:	A. R.O. e-mail:	
b	A. R. O. Address:		
3	Company's Corporate or Partnership Relationship to any other Air Quality Permittee (List the names of any companies that have operating (20.2.70 NMAC) permits and with whom the applicant for this permit has a corporate or partnership relationship):		
4	Name of Parent Company ("Parent Company" means the primary name of the organization that owns the company to be permitted wholly or in part.):		
a	Address of Parent Company:		
5	Names of Subsidiary Companies ("Subsidiary Companies" means organizations, branches, divisions or subsidiaries, which are owned, wholly or in part, by the company to be permitted.):		
6	Telephone numbers & names of the owners' agents and site contacts familiar with plant operations:		

7	<p>Affected Programs to include Other States, local air pollution control programs (i.e. Bernalillo) and Indian tribes:</p> <p>Will the property on which the facility is proposed to be constructed or operated be closer than 80 km (50 miles) from other states, local pollution control programs, and Indian tribes and pueblos (20.2.70.402.A.2 and 20.2.70.7.B)? If yes, state which ones and provide the distances in kilometers:</p>
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Section 1-I – Submittal Requirements

Each 20.2.73 NMAC (NOI), a 20.2.70 NMAC (Title V), a 20.2.72 NMAC (NSR minor source), or 20.2.74 NMAC (PSD) application package shall consist of the following:

Hard Copy Submittal Requirements:

- 1) One hard copy **original signed and notarized application package printed double sided 'head-to-toe' 2-hole punched** as we bind the document on top, not on the side; except Section 2 (landscape tables), which should be **head-to-head**. Please use **numbered tab separators** in the hard copy submittal(s) as this facilitates the review process. For NOI submittals only, hard copies of UA1, Tables 2A, 2D & 2F, Section 3 and the signed Certification Page are required. **Please include a copy of the check on a separate page.**
- 2) If the application is for a minor NSR, PSD, NNSR, or Title V application, include one working hard **copy** for Department use. This **copy** should be printed in book form, 3-hole punched, and **must be double sided**. Note that this is in addition to the head-to-toe 2-hole punched copy required in 1) above. Minor NSR Technical Permit revisions (20.2.72.219.B NMAC) only need to fill out Sections 1-A, 1-B, 3, and should fill out those portions of other Section(s) relevant to the technical permit revision. TV Minor Modifications need only fill out Sections 1-A, 1-B, 1-H, 3, and those portions of other Section(s) relevant to the minor modification. NMED may require additional portions of the application to be submitted, as needed.
- 3) The entire NOI or Permit application package, including the full modeling study, should be submitted electronically. Electronic files for applications for NOIs, any type of General Construction Permit (GCP), or technical revisions to NSRs must be submitted with compact disk (CD) or digital versatile disc (DVD). For these permit application submittals, **two CD** copies are required (in sleeves, not crystal cases, please), with additional CD copies as specified below. NOI applications require only a **single CD** submittal. Electronic files for other New Source Review (construction) permits/permit modifications or Title V permits/permit modifications can be submitted on CD/DVD or sent through AQB's secure file transfer service.

Electronic files sent by (check one):

☐ CD/DVD attached to paper application

☐ secure electronic transfer. Air Permit Contact Name _____

Email _____

Phone number _____

a. If the file transfer service is chosen by the applicant, after receipt of the application, the Bureau will email the applicant with instructions for submitting the electronic files through a secure file transfer service. Submission of the electronic files through the file transfer service needs to be completed within 3 business days after the invitation is received, so the applicant should ensure that the files are ready when sending the hard copy of the application. The applicant will not need a password to complete the transfer. **Do not use the file transfer service for NOIs, any type of GCP, or technical revisions to NSR permits.**

- 4) Optionally, the applicant may submit the files with the application on compact disk (CD) or digital versatile disc (DVD) following the instructions above and the instructions in 5 for applications subject to PSD review.
- 5) If **air dispersion modeling** is required by the application type, include the **NMED Modeling Waiver** and/or electronic air dispersion modeling report, input, and output files. The dispersion modeling **summary report only** should be submitted as hard copy(ies) unless otherwise indicated by the Bureau.
- 6) If the applicant submits the electronic files on CD and the application is subject to PSD review under 20.2.74 NMAC (PSD) or NNSR under 20.2.79 NMC include,
 - a. one additional CD copy for US EPA,
 - b. one additional CD copy for each federal land manager affected (NPS, USFS, FWS, USDI) and,
 - c. one additional CD copy for each affected regulatory agency other than the Air Quality Bureau.

If the application is submitted electronically through the secure file transfer service, these extra CDs do not need to be submitted.

Electronic Submittal Requirements [in addition to the required hard copy(ies)]:

- 1) All required electronic documents shall be submitted as 2 separate CDs or submitted through the AQB secure file transfer service. Submit a single PDF document of the entire application as submitted and the individual documents comprising the application.
- 2) The documents should also be submitted in Microsoft Office compatible file format (Word, Excel, etc.) allowing us to access the text and formulas in the documents (copy & paste). Any documents that cannot be submitted in a Microsoft Office compatible

format shall be saved as a PDF file from within the electronic document that created the file. If you are unable to provide Microsoft office compatible electronic files or internally generated PDF files of files (items that were not created electronically: i.e. brochures, maps, graphics, etc.), submit these items in hard copy format. We must be able to review the formulas and inputs that calculated the emissions.

- 3) It is preferred that this application form be submitted as 4 electronic files (**3 MSWord docs**: Universal Application section 1 [UA1], Universal Application section 3-19 [UA3], and Universal Application 4, the modeling report [UA4]) and **1 Excel file** of the tables (Universal Application section 2 [UA2]). Please include as many of the 3-19 Sections as practical in a single MS Word electronic document. Create separate electronic file(s) if a single file becomes too large or if portions must be saved in a file format other than MS Word.
- 4) The **electronic file names** shall be a maximum of 25 characters long (including spaces, if any). The format of the electronic Universal Application shall be in the format: "A-3423-FacilityName". The "A" distinguishes the file as an application submittal, as opposed to other documents the Department itself puts into the database. Thus, all electronic application submittals should begin with "A-". Modifications to existing facilities should use the **core permit number** (i.e. '3423') the Department assigned to the facility as the next 4 digits. Use 'XXXX' for new facility applications. The format of any separate electronic submittals (additional submittals such as non-Word attachments, re-submittals, application updates) and Section document shall be in the format: "A-3423-9-description", where "9" stands for the **section #** (in this case Section 9-Public Notice). Please refrain, as much as possible, from submitting any scanned documents as this file format is extremely large, which uses up too much storage capacity in our database. Please take the time to fill out the **header information** throughout all submittals as this will identify any loose pages, including the Application Date (date submitted) & Revision number (0 for original, 1, 2, etc.; which will help keep track of subsequent partial update(s) to the original submittal. Do not use special symbols (#, @, etc.) in file names. The footer information should not be modified by the applicant.

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Section 12:	PSD Applicability Determination for All Sources & Special Requirements for a PSD Application
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Section 21:	Addendum for Landfill Applications
Section 22:	Certification Page



Paul Wade <pwade@montrose-env.com>

[EXTERNAL] FW: PARCELS_ (3).csv

2 messages

Taylor Thornton <TThornton@lincolncountynm.gov>
To: "pwade@montrose-env.com" <pwade@montrose-env.com>

Wed, May 19, 2021 at 4:49 PM

From: LeeRoy Zamora Jr <LZamoraJr@lincolncountynm.gov>
Sent: Wednesday, May 19, 2021 4:47 PM
To: John Serna <JSerna@lincolncountynm.gov>; Taylor Thornton <TThornton@lincolncountynm.gov>
Subject: PARCELS_ (3).csv

Here you go, guys....Come back here when you get a chance and I'll show y'all.

LZ

 **PARCELS_ (3).csv**
28K

Paul Wade <pwade@montrose-env.com>
To: Taylor Thornton <TThornton@lincolncountynm.gov>

Thu, May 20, 2021 at 8:49 AM

Taylor
Thank you for the information.

Is there a way to get a map showing what boundary was used when getting the landowners within 0.5 miles of the two lots. Both the list and the map is a required submittal to the state for the air quality permit application.


4072059362029000000
4072059390030000000

Exhibit 2

Thanks

[Quoted text hidden]

--

 MEG Logo_Signature

Paul Wade

Sr. Engineer

Montrose Air Quality Services, LLC

3500 G Comanche Rd. NE, Albuquerque, NM 87107

T: 505.830.9680 x6 | F: 505.830.9678

PWade@montrose-env.com

www.montrose-env.com

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Paul Wade <pwade@montrose-env.com>

[EXTERNAL] FW: Lincoln

1 message

Taylor Thornton <TThornton@lincolncountynm.gov>
To: "pwade@montrose-env.com" <pwade@montrose-env.com>

From: John Serna <JSerna@lincolncountynm.gov>
Sent: Thursday, May 20, 2021 12:37 PM
To: Taylor Thornton <TThornton@lincolncountynm.gov>
Subject: Lincoln

Exhibit 3



11/5/21, 4:41 PM

Montrose Environmental Group, Inc Mail - [EXTERNAL] FW: Lincoln

Livestock/ Personal Property Appraiser

Certified Residential Appraiser

575-648-2306 EXT 118

EXHIBIT 4

Track Another Package +

Tracking Number: 70201290000187912012

Remove X

Your item was picked up at a postal facility at 10:11 am on June 11, 2021 in BOERNE, TX 78006.

✓ **Delivered, Individual Picked Up at Postal Facility**

June 11, 2021 at 10:11 am
BOERNE, TX 78006

Get Updates ▼

Feedback

Text & Email Updates



Tracking History



June 11, 2021, 10:11 am

Delivered, Individual Picked Up at Postal Facility
BOERNE, TX 78006

Your item was picked up at a postal facility at 10:11 am on June 11, 2021 in BOERNE, TX 78006.

June 10, 2021, 3:03 pm

Arrived at Post Office
BOERNE, TX 78006

June 9, 2021, 10:53 pm

Departed USPS Regional Facility
SAN ANTONIO TX DISTRIBUTION CENTER

Exhibit 4

June 9, 2021, 9:14 am
Arrived at USPS Regional Facility
SAN ANTONIO TX DISTRIBUTION CENTER

June 8, 2021
In Transit to Next Facility

June 7, 2021, 9:42 pm
Departed USPS Facility
ALBUQUERQUE, NM 87101

June 7, 2021, 7:40 pm
Arrived at USPS Facility
ALBUQUERQUE, NM 87101

Product Information



Feedback

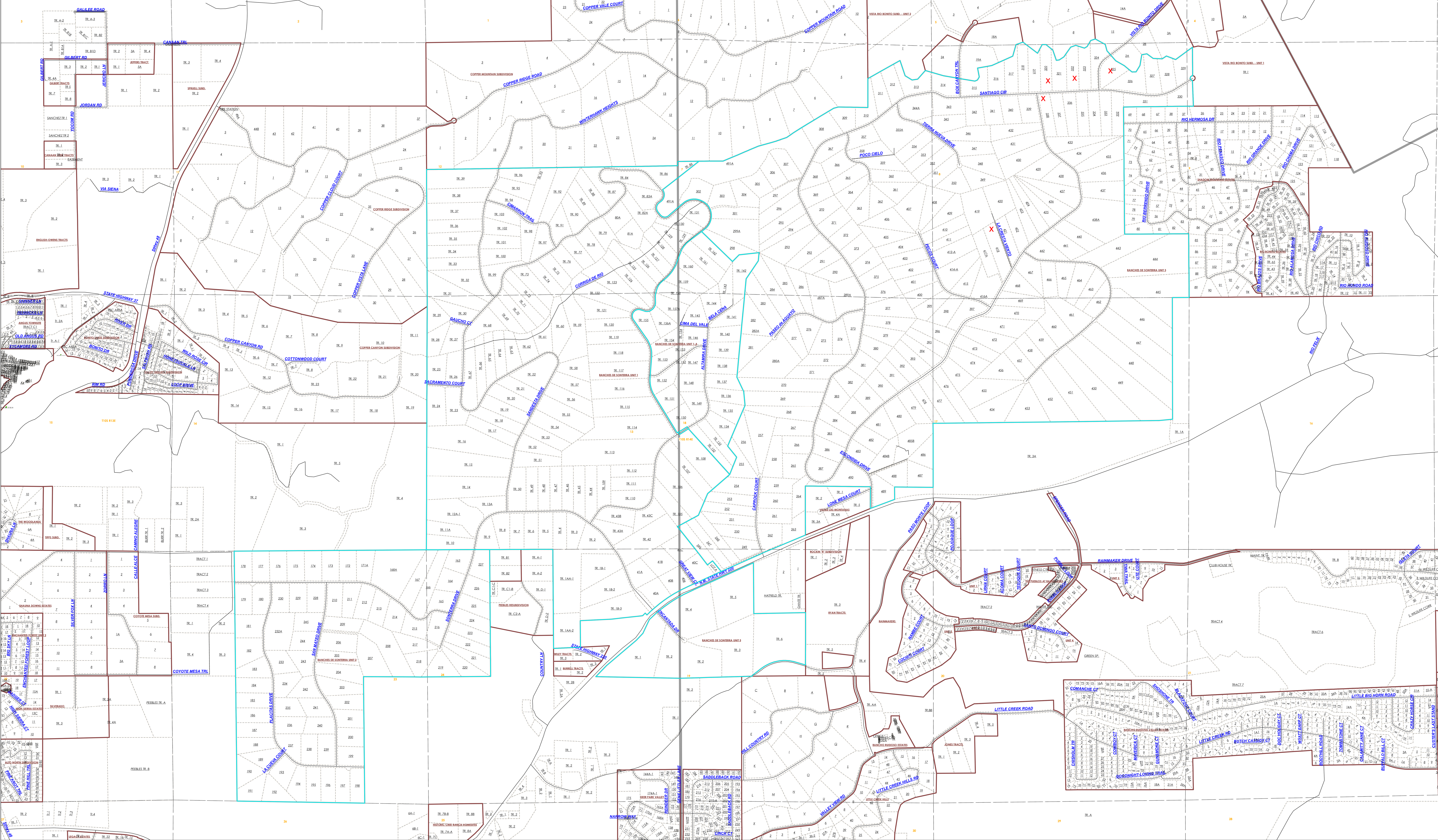
See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

EXHIBIT 5



NOTICE: The Lincoln County Assessor makes no warranty or statement regarding the accuracy or content of these maps. This map is for assessment purposes only and should NOT be used for legal conveyance.

Exhibit 5